

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Ethics and Elections Committee

BILL: SM 854

INTRODUCER: Senator Detert

SUBJECT: Memorial to Congress regarding the Hatch Act

DATE: March 19, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	Favorable
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Memorial 854 provides that the Florida Legislature:

- Opposes the extension of the Hatch Act to the employees of a Florida sheriff’s office who seek an elected office.
- Finds that the extension of the Hatch Act to these Florida residents is contrary to their best interest.
- Recognizes that a Florida sheriff is an independent constitutional officer that is not included within the state executive branch of government, such that the Office of Special Counsel should not extend the Hatch Act to sheriffs.

II. Present Situation:

In 1939, Congress enacted the Hatch Act¹, which made specific political activities illegal. The law encompassed certain actions of federal employees in the executive branch of government. In 1940, Congress amended this law to include certain state and local officers and employees.² The Hatch Act applies to state and local employees in the executive branch of government who are employed primarily from programs financed with federal money. These employees may not:

¹ The law was originally entitled “An act to prevent pernicious political activities,” but is commonly referred to as the “Hatch Act” after the Senator who sponsored the laws. Thomas J. Oliver, Annotation, *What acts amount to violation of Hatch Act (5 U.S.C.A. § 1501-1503) prohibiting political activity of certain state and local employees*, 8 A.L.R. FED. 343(pt. 1§ 2[a]), (1971).

² *Id.*

- Use their official position to influence or interfere with the results of an election; or
- Coerce contributions, either directly or indirectly, from subordinates in support of a political party or candidate; or
- Run for a public office in a partisan election.³

With regard to this last prohibition, any individual holding an elective office, a city mayor, a Governor or Lt. Governor, or a duly elected head of an executive department of a state or city who is not classified under a state or municipal merit or civil-service system, would be allowed to run for a public office in a partisan election.⁴

The U.S. Office of Special Counsel has interpreted the Hatch Act to apply to sheriff's office employees who run for sheriff. Specifically, the office has stated:

The Hatch Act, 5 U.S.C. §§ 1501-1508, restricts the political activity of individuals principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. It has long been established that an officer or employee of a state or local agency is subject to the Hatch Act, if as a normal and foreseeable incident of his principal position or job, he performs duties in connection with an activity financed in whole or in part by federal funds. Coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them.⁵ [footnotes and citations omitted]

Furthermore, after reviewing the Florida State Constitution, state statutes, and case law, the United States Office of Special Counsel determined that Florida sheriffs' offices are executive branch agencies for purposes of the Hatch Act.⁶

III. Effect of Proposed Changes:

Senate Memorial 854 provides that the Florida Legislature:

- Opposes the extension of the Hatch Act to the employees of a Florida sheriff's office who seek an elected office.
- Finds that the extension of the Hatch Act to these Florida residents is contrary to their best interest.
- Recognizes that a Florida Sheriff is an independent constitutional officer that is not included within the state executive branch of government, such that the Office of Special Counsel should not extend the Hatch Act to sheriffs.

³ U.S. Office of Special Counsel, *Hatch Act of State and Local Employees: Prohibited Activities*, http://www.osc.gov/ha_state.htm, (Site last visited on Mar. 20, 2009); 5 U.S.C. § 1502 (2007).

⁴ 5 U.S.C. § 1502 (2007).

⁵ U.S. Office of Special Counsel, Response to a request for an advisory opinion, July 14, 2008, pg. 1, <http://www.marconews.com/news/2008/jul/17/rambosk-resigns-collier-sheriffs-office-avoid-viol/> (follow "Read letter sent to Rambosk about Hatch Act (pdf.)") (Site last visited on Mar. 23, 2009).

⁶ *Id.* pg. 1, n.1.

A copy of the memorial is to be presented to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some Florida cases suggest that sheriffs are not members of the judicial branch. *See Advisory Opinion to the Governor*, 213 So. 2d 716, 718 (Fla. 1968) (dictum) (where court referenced that a sheriff was part of the executive branch). *See also Armor Correctional Health Services, Inc. v. Ault*, 942 So. 2d 976, 977 (Fla. 4th DCA, 2006) (in holding that a trial court had no authority to mandate how a health service provider “carries out the sheriff’s duty to provide medical care to jail inmates,” the court found that “[o]peration of the county jail is within the province of the executive and legislative branches of government, not the judicial branch.”).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
